

--6. [AMENDED] A method as claimed in claim 5, wherein the labelled probes are [random mixture of oligonucleotides is] present at a concentration of 2-10 O.D./ml.--

REMARKS

I. Preliminary Remarks

The title and specification have been amended to correct various informalities in accordance with the suggestions of the Examiner. Claims 2, 5, and 6 have also been amend to correct informalities and to recite the method steps of producing the labelled probes in claim 5. The amendments are supported in the original disclosure and do not introduce new matter into the application.

II. Outstanding Rejections

Claims 5 and 6 stand rejected under 35 U.S.C. §112 (second paragraph) as being indefinite.

Claims 1 and 4 stand rejected under 35 U.S.C. §102 (a) as being anticipated by Stratagene (January 1997).

Claims 2, 3, 5 and 6 stand rejected under 35 U.S.C. §103 (a) as being unpatentable over Stratagene in view of Suganuma et al. (Analytical Biochemistry) and further in view of Shen et al. (EP 0 726 310).

III. Patentability Arguments

A. The Rejection Under 35 U.S.C. §112 (second paragraph) Should be Withdrawn.

Claims 5 and 6 have been amended in accordance with the suggestions of the Examiner and the rejection of those claims under 35 U.S.C. §112 (second paragraph) should be withdrawn.

B. The Rejection of claims 1 and 4 under 35 U.S.C. §102(a) Should be Withdrawn.

The rejection of claims 1 and 4 under 35 U.S.C. §102(a) over Stratagene should be withdrawn because Stratagene fails to teach a labelling composition comprising a random mixture of oligonucleotides which are 7 to 8 mers. While Stratagene teaches the availability of any of a variety of oligonucleotides, some of which are in the range of 6 to 8 nucleotides in length, the random mixture of oligonucleotides which are 6, 7 or 8 mers is not seen. More specifically the oligonucleotides of the Stratagene catalogue are intended to be used as linkers which are said at page 24 to be “palindromic oligomers that create an internal restriction endonuclease site.”

Finally, the Stratagene oligonucleotides are all of defined sequence and the Stratagene catalogue does not disclose a random mixture of oligonucleotides. Accordingly, the rejection of claims 1 and 4 should be withdrawn.

C. The Rejection of Claims 2, 3, 5 and 6 under 35 U.S.C. §103(b) Should be Withdrawn.

The rejection of claims 2, 3, 5 and 6 under 35 U.S.C. §103 (a) over Stratagene in combination with Suganuma et al. and Shen et al. should be withdrawn as Stratagene fails to teach the subject matter of independent claim 1 (from which claims 2, 3, 5 and 6 depend) and neither Suganuma nor Shen make up for the deficiencies of Stratagene. While the secondary references supply additional elements of the dependent claims, they do not render obvious the

selection of 6, 7 or 8-mers in a dry state. In fact, Saganuma teaches away from the unexpected results obtained by the invention by teaching a selection of 5-mers to 11-mers. Further, Saganuma fails to suggest that the compositions be provided in a dry state.

Shen does disclose compositions in the dried state but does not clearly teach that those compositions contain oligonucleotides as primers. An examination of Shen at page 5, lines 1 to 16 discloses that the dried formulation contains enzyme, cryoprotectant, nucleotide triphosphates, metal ions and cofactors but seems to teach that the dried composition is reconstituted before the addition of primers. While the Examiner cites page 6, lines 3 to 6 and 22 in support of the proposition that the composition comprises primers in a dry state, there is no indication that the oligonucleotide primer is actually presenting those compositions. For the foregoing reasons, the rejections under 35 U.S.C. §102(a) should be withdrawn.

IV. Conclusion

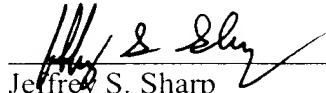
For the foregoing reasons each of claims 1-6 should be allowed. Should the Examiner wish to discuss any further matter of form or substance, she is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

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